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IN THE SUPREME COURT
of the
UNITED STATES

October Term, 1970
No. 720

R. L. NORTON
Petitioner

v.

STATE OF IDAHO
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATUTES CITED

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Respondent, STATE OF IDAHO, respectfully requests that the Petition for Writ of Certiorari in the above entitled matter be denied.

REASONS FOR DENYING THE WRIT

It is clearly the law that in matters of interstate extradition federal law controls over state law. In re Martz, 83 Idaho 72, 357 P.2d 940 (1960); Smith v. State, 89 Idaho 70, 403 P.2d 221 (1965); Fenton v. State, 91 Idaho 149, 417 P.2d 415 (1966); 18 U.S.C.A., § 3182.

The Petitioner, R. L. NORTON, concedes that

there is no irregularity in the extradition process, i.e., that he was demanded as a fugitive by the executive of the demanding state, that he was charged with a crime in the demanding state, and that he was charged by an indictment or affidavit made before a magistrate, a certified copy of which was presented with the requisition for extradition.

Petitioner asserts, however, that he specifically proved that he was not a fugitive from justice within the meaning of 18 U.S.C.A., § 3182. In support of this contention, Petitioner offered proof that he was actually in Albuquerque, New Mexico, from June 14 through June 17, 1968. The State of Idaho contends that when the extradition process is regular, as is conceded herein, there arises a presumption that the authority of the demanding state is correct in his determination that the accused is a fugitive and that it is within the discretion of the trial court to determine whether or not the evidence of the Petitioner sufficiently rebutted the case established by the admittedly regular extradition process. Hyatt v. New York, 188 U.S. 691 (1903); Smith v. State, supra; In re Martz, supra.

The State of Idaho admits that the evidence presented by the Petitioner, tending to show his absence from the demanding state, may have large significance in the eventual determination of his guilt or innocence, but contends that the trial court correctly determined

that the evidence presented by the Petitioner did not sufficiently rebut the case established by the admittedly regular extradition process; and that while the evidence may have large significance in the eventual determination of Petitioner's guilt or innocence, such is not a proper matter for determination in a proceeding challenging extradition.

The Petitioner further contends that the trial court erred in refusing to hear evidence on the motivation behind the extradition process, to-wit: that it was being used for the collection of a private debt. While the rule in the demanding state may permit inquiry into the prosecution's motive for extradition, the general rule under federal law is that the governor of the asylum state has for decision, and his inquiry is limited to, questions of whether the demanded person has been substantially charged with a crime and whether he is a fugitive from justice. Roberts v. Riley, 116 U.S. 80 (1885).

The State of Idaho contends that when the extradition process is admitted to be regular on its face, any consideration of or inquiry into the motives which induced and guided the request for extradition is immaterial and inappropriates. In re Moyer, 12 Idaho 250, 85 P. 190 (1906); Pettibone v. Nichols, 203 U.S. 192 (1906); People ex rel Carr v. Murray, 192 N.E. 198 (Ill. 1934); Drew v. Thaw, 235 U.S. 432 (1914).

It would seem that the Petitioner would require

the trial court in the asylum state to make extensive inquiry into the merits of the criminal charge which has been filed in the demanding state. The State of Idaho contends that such a requirement was never intended by the provisions of 18 U.S.C.A., § 3182. The State of Idaho further contends that the opinion of the Idaho Supreme Court affirming the trial court's order quashing the habeas corpus writ is well-founded in law and does not infringe upon any of the constitutional rights guaranteed to the Petitioner, and that the proper time and place for the presentation of the proof which the Petitioner contends should have been admitted in the Idaho trial court is the criminal trial in the demanding state at a hearing on the merits.

For the above and foregoing reasons the State of Idaho submits that the application for writ of certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

January 12, 1971

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 1971, I served the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI by placing a true and correct copy thereof in the United States mail, postage prepaid, addressed to:

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